MOTION FILED
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No. 04-215

In The
Supreme Court of the United States

SCOTT P. ROBART,

Petitioner,

v.

THE STATE OF ALASKA,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Alaska

MOTION OF AMERICAN MINT LLC FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE

Petitioner, Scott P. Robart, has consented to the filing of this brief by *amicus curiae*. Respondent, State of Alaska, has withheld consent. The American Mint LLC hereby moves, pursuant to Supreme Court Rule 37.2(b), for leave to file an *amicus curiae* brief in support of Petitioner.

American Mint LLC is in the business of production, distribution and sale of commemorative items throughout the United States.

American Mint LLC submits this brief to illustrate the impact of the Alaska Court of Appeals' decisions on the interstate commerce involved in commemorative items, including those that incorporate state seals. Certiorari review is needed to correct the Alaska Court of Appeals' erroneous interpretation of the First Amendment and the Copyright Act and to resolve the far-reaching uncertainty occasioned by that decision. Given the ramifications of this case on American Mint LLC and other similarly situated businesses, American Mint LLC respectfully requests leave to file the attached brief *amicus curiae* in support of Petitioner.

Respectfully submitted,

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BRIEF OF AMERICAN MINT LLC AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

American Mint LLC ("American Mint") submits this *amicus curiae* brief in support of petitioner Scott P. Robart.[1] Petitioner Robart has consented to American Mint's filing of this brief, and Respondent the State of Alaska has not. A Motion for Leave to File Brief *Amicus Curiae* is therefore being filed concurrently with this brief.

I. INTEREST OF *AMICUS CURIAE*

Amicus curiae American Mint is engaged in the business of producing commemorative coins, medallions and other themed collectibles. *Amicus curiae* is actively engaged in interstate commerce and sells coins and medallions throughout the United States. The interstate commerce outside its home state of Pennsylvania is a large portion of its gross sales and is vital to its business. *Amicus curiae* is interested in continuing to grow and develop its business in a competitive marketplace without restrictions that create uncertainty in the marketplace for commemorative products.

The Alaska Court of Appeals' decisions create uncertainty in the interstate commerce venues in which *amicus curiae* is actively engaged. Those decisions raise the potential that neither the First Amendment nor the Copyright Act will shield legitimate businesses from legal

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[1] This brief was authored by counsel for American Mint, with assistance from counsel for Petitioner. Other than the *amicus curiae*, no person or entity made a monetary contribution to this brief's preparation or submission. *See* Sup. Ct. R. 37.6.

action for using a state seal without permission in 26 of the 50 states, including criminal prosecution in 18 states.

Amicus curiae submits this brief to illustrate the impact of the Alaska Court of Appeals decisions on the commemorative products industry, particularly when contrasted with the Pennsylvania Commonwealth Court's copyright preemption decision in *Bicentennial Comm'n of Pennsylvania v. Olde Bradford Co.*[2] *Amicus curiae* contend that certiorari review is needed to correct the Alaska Court of Appeals' erroneous application of both First Amendment principles and the Copyright Act and to remove the uncertainty caused by that decision.

II. SUMMARY OF ARGUMENT

Amicus curiae supports Scott Robart's petition for the reasons identified by Robart. The status of the law in light of the Alaska Court of Appeals' decisions in the Robart cases creates substantial uncertainty for individuals and businesses who are engaged in producing and marketing celebratory, non-deceptive items that incorporate governmental symbols, including state seals.

Whether as a matter of this Court's First Amendment jurisprudence, as a matter of federal copyright law, or both, there should be a uniform national rule that permits non-deceptive graphic and artistic reproductions of state seals and other governmental insignia by both businesses and individuals without prior approval from the government.

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[2] 365 A.2d 172 (Pa. Commw. Ct. 1976).

The Court should grant the petition for writ of certiorari and, upon review, should reverse the decisions of the Alaska court.

III. ARGUMENT

A. The Ruling By The Alaska Court Of Appeals Creates An Intolerable Burden On Important Interstate Commerce.

The area of commerce affected by the ruling is nationwide, substantial, and vital. American Mint has sold commemorative coins, medallions, historical badges and insignia to more than 500,000 direct mail customers throughout the United States. Many of these themed collectibles commemorate events which are central to a state's history, and which may be reflected in a state's seal. While American Mint has not utilized state seals on its products to date, it may want to do so in the future.

It is important to be able to use the symbols and imagery reflected in state seals in commemorative products. Many states have adopted seals which celebrate the unique symbols of their state, and it is natural that consumers and collectors will want to invoke the same symbols and imagery for the purpose of celebrating the state.

Allowing the decisions of the Alaska Court to stand would have the intolerable effect of permitting the use of criminal statutes to protect a state's purely economic interests in a symbol developed with taxpayer monies. The current Alaska criminal statute takes within its ambit legitimate commercial activities of Petitioner and persons similarly situated, which are protected by the First Amendment. Alaska's statute could be drafted far more

narrowly to protect the state's interest in preventing any fraudulent use of its state seal while not violating Petitioner's and other's First Amendment rights.

The ruling creates an intolerable uncertainty in the field. Furthermore, it discourages the marketing of medallions for certain states because of fear of criminal prosecution. The consequence is that consumers and collectors in some states have little choice – other than the state monopolies – for commemorative medallions.

B. The Ruling Upholding The Statute Reinforces An Unfair Monopoly By The States.

The state statutes at issue give the states monopoly advantages in a field of commerce unrelated to their core governmental functions. The state monopolies squelch competition and diminish options open to citizens, patriots, consumers and collectors.

C. The Court Should Grant The Writ Of Certiorari To Enforce A Uniform Nationwide Standard Under The First Amendment And The Copyright Act.

A uniform rule nationwide is essential. It would serve to provide certainty and predictability about rights and what is in or out of the public domain. It would further allow parties to develop new works without fear of prosecution.

The First Amendment provides a rule of national uniformity that would protect and encourage an unfettered market in symbolic speech and avoid the balkanizing effect of parochial state seal statutes.

The 1976 revision of the Copyright Act establishes a policy of national uniformity in the subject matter of copyright to accomplish certainty and predictability. A state seal incorporated in a commemorative medallion is within the subject matter of copyright under 17 U.S.C. § 102.[3] On the copyright issue, the Pennsylvania Commonwealth Court's decision in *Olde Bradford* is consistent with what the rule should be: state statutes prohibiting non-deceptive use of state seals affect copyright rights and should be subject to copyright preemption analysis.

IV. CONCLUSION

As set forth by the Petitioner and supported by the foregoing additional reasons, the Court should grant the petition for writ of certiorari.

Respectfully submitted,

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[3] *See Feist Publications, Inc. v. Rural Telephone Service Company, Inc.*, 499 U.S. 340, 345 (1991).